IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5685 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT MAZDOOR SABHA THRO' JOINT SECRETARY

Versus

REGIONAL PROVIDENT COMMISSIONE

Appearance:

1. Special Civil Application No. 5685 of 2002

MR MUKUL SINHA for Petitioner No. 1

M/S PATEL ASSOCIATES for Respondent No. 1-2

MR KS NANAVATI SR. COUNSEL for SINGHI & CO for Respondent No. 3

MR KM PATEL for Respondent No. 4

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 08/10/2002

CAV JUDGEMENT

1. This petition is closely connected with Special Civil Application No. 5192 of 1999 as the outcome of this petition mainly depends on the judgment that may be rendered in Special Civil Application No. 5192 of 1999. The learned counsels appearing in this petition for the petitioner as well as for the respondents also agreed to this position and for that precise reason both these petitions were head together. However, considering the fact that it would be convenient for me to decide this matter separately, a separate judgment is being delivered instead of a common judgment in both the aforesaid petitions. The petitioner and respondents nos. 3 and 4 of this petition and the other petition are common. So far respondents nos. 1 and 2 are concerned, they are not parties to the Special Civil Application No. 5192 of 1999.

2. The petitioner is a registered trade union and according to it, it is having majority of workmen engaged by the Indian Farmers Fertilizer Company (for short 'IFFCO') i.e. respondent no. 3 for the operation of stacking and loading and unloading of the urea filled bags.

3. Respondent no. 3 - IFFCO is operating under such Cooperative Society formed under the provisions of Multi-State Cooperative Societies Act. Its area of operation extends whole of Indian region. It has two of its industrial units in the State of Gujarat, one at Kalol in district Mehsana and the other at Kandla in district Kutch. The present petition pertains to IFFCO at Kandla.

3.1. The objects and the constitution of IFFCO are narrated in detail in the judgment delivered in Special Civil Application No. 5192 of 1999 and hence the same is not required to be sated here. However, it is worthwhile to note that the IFFCO engages contract labour for the purpose of stacking the urea filled bags on the platform and loading and unloading them in and from railway wagons and the trucks.

3.2. The controversy with regard to engaging contract labour in the aforesaid operations is going on since long between the IFFCO and the contract labour, who according to the petitioner, have been employed in such operations since the year 1984. The say of the petitioner is that these employees have been working with IFFCO right from the year 1984, though under the guise of contract labour, they have continued to be there all throughout, till tis date even when the contractors have

been changing from time to time. It is the say of the petitioner that considering the perennial and permanent nature of the operations, contract labour cannot be permitted in such operations and employment on the regular basis as to be there. In fact, in light of the continuous conflict between the petitioner and the IFFCO certain notifications have been issued by the State Government gradually abolishing employment of contract labour in aforesaid operations and such notifications have been made subject matter of litigation for this Court. However, the validity and justification of those notifications are not the subject matter of challenge in the present petition as well as the other petition i.e. Special Civil Application No. 5192 of 1999. The main controversy of Special Civil Application No. 5192 of 1999 is with regard to which is the 'appropriate Government' in respect of IFFCO as envisaged under Section 2 (a) of the Contract Labour (Regulation and Abolition) Act (for short 'the Act'). The appropriate Government with regard to IFFCO till March 1998 was considered to be the State Government and the prohibitory notifications issued by the State Government were issued in the capacity of it being the appropriate Government vis-a-vis IFFCO. However, in view of the decision rendered by the Alex Court in the case of Air India Statutory Corporation v. United Labour Union reported in (1997) 9 S.C.C. page 377, the Union Ministry for Labour and the office of the Chief Central Labour Commissioner decided that for certain categories of the industry, the Central Government would be the appropriate Government and they evolved certain principles and guidelines laying down the test for this purpose. Accordingly the IFFCO came to be considered as an industry falling in that category for which Central Government is specified as the appropriate Government. Since no prohibition on contract labour in the operations of stacking and loading and unloading in IFFCO has been prescribed by the Central Government, IFFCO as well as the contractor, after obtaining due registration and the licences respectively from the concerned authority under the Act, have continued that employment of contract labour despite the fact that the employment of contract labour had been prohibited by the State Government. The continuation of employment of contract labour was done on the ground that since State Government is not the appropriate Government vis-a-vis IFFCO, the notification issued by it on 3rd June, 1998 ceased to have any effect and the IFFCO was at liberty to engage contract labour in those operations.

3.3. In this petition the petitioner has made grievance that over and above 150 workmen employed by the

IFFCO through contractor in the operation of stacking and loading and unloading of urea bags since 1984, there are about 69 workers who have been engaged through the contractor for that purpose. However, these persons are not extended certain statutory benefits which are mandatory for the employer. The petitioner's say is that these 69 workers, who are members of the petitioner, have been working in IFFCO for the last 5 or more years. Despite that, they have been neglected for extending the benefits under the provisions of the Act, the Industrial Disputes Act, the Employees' State Insurance Act, the Factories Act and such other labour legislations. It is the say of the petitioner that since these people have been employed in the service of IFFCO despite the aforesaid prohibition of the employment of contract labour, these persons are required to be regularized in service and all the monetary as well as other benefits that are made available to the regular employees of the IFFCO should be made available to them. The petitioner has made a grievance that respondent no. 1, who is supposed to look after the employees' provident fund and keep strict check on the employer's contribution for the employees in case of IFFCO and in particular in relation to 69 workers, respondent no. 1 has totally shown indifference and has not taken any steps compelling he IFFCO to comply with the provisions of the Provident Funds Act. Similar grievances have been made with regard to Employees' State Insurance Act and the Payment of Pension and Gratuity Act. The petitioner's case further is that the concerned authorities may be directed by this Court to take all necessary action under the respective acts against the IFFCO. Details of these measures, which according to the petitioner, are required to be taken against the respondents, have been duly set-out in the relief clauses of this petition.

4. As against this, case of the respondent IFFCO is that the present petition under Article 226 of the Constitution is not maintainable in view of the fact that the IFFCO is neither an "instrumentality of the State Government" nor "State" within the meaning of Article 12 of the Constitution of India. It has further contended that the IFFCO is not discharging any public duty and, therefore, also it cannot be directed in this writ jurisdiction by this Court to discharge such an obligation. It has further stated that so far the measures for which the direction has been sought, cannot be resorted to because of the fact that in petition under Article 226 of the Constitution such directions cannot be given. The IFFCO has also controverted the say of the petitioner that the 69 persons mentioned in this petition

are in the employment of the IFFCO since last 5 years and more and now their services are sought to be terminated and the accommodations, which they were occupying, are required to be vacated.

5. I have carefully considered the aforesaid controversies. The same are now discussed and decided in the factual background of Special Civil Application No. 5192 of 1999 and in light of the findings arrived at in the judgment delivered in that petition, the question whether the aforesaid 69 persons become automatic employees of the petitioner, is required to be answered in negative because of the finding given by me in the other petition that upon abolition of contract labour, there is no automatic absorption. Moreover, I have also held in that petition that though the appropriate Government is the State Government vis-a-vis IFFCO in relation to the provisions of the Act and the prohibition imposed by the State Government would stand revived upon my delivering the judgment in that case, for the interregnum period i.e. the period between the issuance of prohibitory notification by the State Government on 6th June, 1998 and my holding that the State Government is the appropriate Government the employees who continued to be in service of the petitioner for aforesaid operations through contract labour could not be automatically absorbed because a situation akin to the automatic absorption is emerging. In other words, considering the circumstances on record the petitioner's claim regarding continuation of contract labour even after its prohibition amounted to absorption of erstwhile contract labour as permanent employees of the principal employer cannot be granted and, therefore, no direction can be given to respondent no. 4 to absorb them in the employment and to regularize their services. It is clear from judgment in Special Civil Application No. 5192 of 1999 that the abolition of contract labour would stand revived and IFFCO would now not be permitted to have contract labour in the operations of stacking and loading and unloading of urea bags. However, if the respondent, considering the fact that there is need to employ employees for carrying out aforesaid operation and in such event it should give priority to the workers that have been working on contract labour basis. Considering the rival stand revolving round the factual data, the other grievance pertaining to the disputes between the IFFCO and the petitioner need leading of evidence and appreciation of evidence which can adequately be adjudicated and the petitioner if it so desire, can approach the appropriate forum for that purpose.

5.1. So far the reliefs with regard to the compliance of the Provident Fund Act and direction on respondent no. 1 are concerned, since the question with regard to the petitioner being direct employees of the IFFCO and there is a relationship of employer and employees is existing between them, it would be difficult for me to grant such relief in this petition. However, respondent no. 1 can be directed to closely examine the entire record of the contractor to find out the latest position of the employer's contribution towards the provident fund and if the concerned contractor is found guilty of committing of some irregularity or illegality, he should be adequately proceeded with under the provisions of the Provident Fund Act. IN case of breach of the Provident Fund provisions by the contractor, whether IFFCO as principal employer has discharged its responsibility. If default is found on the part of IFFCO, appropriate action as envisaged under the Act be taken against it. So far reliefs claimed against IFFCO are concerned, the IFFCO cannot be directed to give employment to those workers with all consequential benefits. There would not by virtue of abolition of contract labour a situation arising very akin to employees directly get absorbed in the employment of principal employer. So far injunction sought against respondent nos. 3 and 4 restraining them from engaging the contract labour in the aforesaid operations is concerned, it is obvious that the prohibition imposed by the Act is brought back and now it is existing, the IFFCO cannot engage any contract labour. In that view of the matter, no order with regard to issuing aforesaid injunction in favour of the petitioner can be granted.

5.2. So far Mr. K.S. Nanavati, learned counsel for the IFFCO's argument with regard to the issuance of such direction under Article 226 of the Constitution against IFFCO cannot be given and he has therefore, placed reliance on several decisions of the Apex Court as well as this Court and has stated that the petitioner should file appropriate proceedings before the appropriate forum and not in petition under Article 226. If the disputed questions of facts are involved, it is always necessary and desirable to get such dispute decided by the adjudicator. This Court sitting under Article 226 of the Constitution of India has many impediments in deciding such issues.

6. In view of the aforesaid discussions, it is directed with a view to enable the petitioner to approach the appropriate authority for resolving certain disputes which have been mentioned earlier in this

judgment, the status-quo as on today is required to be maintained for a further period of three weeks from the date of this judgment. The petitioner, in the meanwhile will approach the concerned forum and obtain appropriate interim orders.

6.1. So far respondent no. 1 is concerned, it is directed to verify the record pertaining to provident fund of 69 employees referred to in this petition and ascertain latest position thereof and if it is found that the defaults have been committed either by the contractor or by the principal employer in any manner whatsoever, appropriate legal course should be immediately initiated under the Act. Similarly the authorities under the Payment of Pension and Gratuity Act are concerned, they are directed to examine in detail the records of the petitioner and if found necessary to take adequate steps against the defaulting party. If it is found by respondent no. 1 that the contractor has not made any contribution towards the provident fund of the employees, it can certainly direct the principal employer i.e. IFFCO to fulfill its obligation as provided under the Act.

In light of the aforesaid discussion, the petition is partly allowed. Rule made absolute to aforesaid extent with no order as to costs.

{ AKSHAY H. MEHTA, J.]

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